

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 24, 2010

1:08 p.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Chair  
Representative Bob Herron  
Representative Bob Lynn  
Representative Max Gruenberg  
Representative Lindsey Holmes

**MEMBERS ABSENT**

Representative Nancy Dahlstrom, Vice Chair  
Representative Carl Gatto

**OTHER LEGISLATORS PRESENT**

Representative Kurt Olson

**COMMITTEE CALENDAR**

HOUSE BILL NO. 314

"An Act relating to fees and charges for medical treatment or services, the crime of unsworn falsification, investigations, and penalties as they relate to workers' compensation; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 71

"An Act relating to a registry for advance health care directives."

- HEARD & HELD

HOUSE BILL NO. 331

"An Act relating to funding for youth courts; and relating to accounting for criminal fines."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 314

SHORT TITLE: WORKERS' COMPENSATION

SPONSOR(S): LABOR & COMMERCE

01/27/10 (H) READ THE FIRST TIME - REFERRALS  
01/27/10 (H) L&C, JUD  
02/03/10 (H) L&C AT 3:15 PM BARNES 124  
02/03/10 (H) Moved Out of Committee  
02/03/10 (H) MINUTE(L&C)  
02/05/10 (H) L&C RPT 2DP 3NR  
02/05/10 (H) DP: BUCH, OLSON  
02/05/10 (H) NR: LYNN, HOLMES, T.WILSON  
02/05/10 (H) FIN REFERRAL ADDED AFTER JUD  
02/18/10 (H) JUD AT 1:00 PM CAPITOL 120  
02/18/10 (H) -- MEETING CANCELED --  
02/24/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 71

SHORT TITLE: ADVANCE HEALTH CARE DIRECTIVES REGISTRY

SPONSOR(S): HOLMES, DAHLSTROM, MILLETT, KAWASAKI

01/20/09 (H) PREFILE RELEASED 1/16/09  
01/20/09 (H) READ THE FIRST TIME - REFERRALS  
01/20/09 (H) HSS, JUD  
03/31/09 (H) HSS AT 3:00 PM CAPITOL 106  
03/31/09 (H) Heard & Held  
03/31/09 (H) MINUTE(HSS)  
04/14/09 (H) HSS AT 3:00 PM CAPITOL 106  
04/14/09 (H) Moved CSHB 71(HSS) Out of Committee  
04/14/09 (H) MINUTE(HSS)  
04/15/09 (H) HSS RPT CS(HSS) 3DP 3NR  
04/15/09 (H) DP: HOLMES, SEATON, CISSNA  
04/15/09 (H) NR: LYNN, KELLER, HERRON  
02/19/10 (H) JUD AT 1:00 PM CAPITOL 120  
02/19/10 (H) -- MEETING CANCELED --  
02/24/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 331

SHORT TITLE: YOUTH COURTS AND CRIMINAL FINES

SPONSOR(S): MUNOZ

02/08/10 (H) READ THE FIRST TIME - REFERRALS  
02/08/10 (H) JUD, FIN  
02/24/10 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

KONRAD JACKSON, Staff

Representative Kurt Olson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 314 on behalf of the sponsor, the House Labor and Commerce Standing Committee, which is chaired by Representative Olson.

LINDA HALL, Director  
Division of Insurance  
Department of Commerce, Community, & Economic Development  
(DCCED)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments and responded to questions during discussion of HB 314 and Amendment 1.

ERIN POHLAND, Assistant Attorney General  
Labor and State Affairs Section  
Civil Division (Anchorage)  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** Responded to questions during discussion of HB 314 and Amendment 1.

DON ETHERIDGE, Lobbyist  
Alaska American Federation of Laborers - Congress of Industrial  
Organizations (Alaska AFL-CIO)  
Juneau, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 314 and Amendment 1.

KENTON BRINE, Assistant Vice President  
State Government Relations  
Property Casualty Insurers Association of America (PCIAA)  
Olympia, Washington

**POSITION STATEMENT:** Testified in support of HB 314.

STACY ALLAN, Officer  
Laborers' Local 341  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 341 and Amendment 1.

BARBARA HUFF TUCKNESS, Director  
Governmental and Legislative Affairs  
Teamsters Local 959  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 314 and provided a comment regarding Amendment 1.

KEVIN B. DOUGHERTY, General Counsel  
Alaska District Council of Laborers  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 314 and Amendment 1.

JAMES WALDO, Staff  
Representative Lindsey Holmes  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Assisted with the presentation of HB 71 on behalf of Representative Holmes, one of the bill's joint prime sponsors.

WARD B. HURLBURT, M.D., Director and Chief Medical Officer  
Central Office  
Division of Public Health  
Department of Health and Social Services  
Juneau, Alaska

**POSITION STATEMENT:** Provided comments and responded to questions during discussion of HB 71.

MARIE DARLIN, Coordinator  
AARP Capital City Task Force  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 71 and responded to questions.

LORILYN SWANSON, Manager  
Fireweed Place  
Tlingit-Haida Regional Housing Authority (THRHA)  
Juneau, Alaska

**POSITION STATEMENT:** During discussion of HB 71, testified in support of an advance health care directive registry.

EMILY NENON, Director  
Alaska Government Relations  
American Cancer Society Cancer Action Network (ACS CAN)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 71.

T. TERRY HARVEY, Staff  
Representative Cathy Munoz  
Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Presented HB 331 on behalf of the sponsor, Representative Munoz.

**ACTION NARRATIVE**

[1:08:12 PM](#)

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at 1:08 p.m. Representatives Ramras, Herron, Lynn, and Holmes were present at the call to order. Representative Gruenberg arrived as the meeting was in progress. Representative Gatto was excused. Representative Olson was also in attendance.

**HB 314 - WORKERS' COMPENSATION**

[1:08:25 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 314, "An Act relating to fees and charges for medical treatment or services, the crime of unsworn falsification, investigations, and penalties as they relate to workers' compensation; and providing for an effective date."

[1:09:09 PM](#)

KONRAD JACKSON, Staff, Representative Kurt Olson, Alaska State Legislature - on behalf of the sponsor, the House Labor and Commerce Standing Committee, which is chaired by Representative Olson - offered his understanding that HB 314 addresses the issue of fraud and a small portion of the recommendations outlined in a report produced by the Medical Services Review Committee (MSRC) as it pertains to the medical services fee schedule; and that a forthcoming amendment also addresses the issue of fraud.

[1:11:12 PM](#)

CHAIR RAMRAS made a motion to adopt Amendment 1, labeled 26-LS1354\A.3, Bailey, 2/17/10, which read:

Page 1, lines 1 - 2:

Delete "**the crime of unsworn falsification**"

Insert "**civil damages**"

Page 1, lines 5 - 9:

Delete all material.

Page 1, line 10:

Delete "**Sec. 2**"

Insert "**Section 1**"

Renumber the following bill sections accordingly.

Page 2, lines 15 - 16:

Delete "usual, customary, and reasonable"

Page 2, lines 17 - 21:

Delete "include the most recent Current Procedural Terminology codes for both category I and category II medical treatment or other services published by the American Medical Association; notwithstanding AS 44.62.010 - 44.62.290, the board shall update the schedule annually by order"

Insert "be based on statistically credible data, including charges for the most recent category I, II, and III medical services maintained by the American Medical Association and the Health Care Procedure Coding System for medical supplies, injections, emergency transportation, and other medically related services, and must result in a schedule that (i) reflects the cost in the geographical area where services are provided; and (ii) is at the 90th percentile"

Page 2, line 26, through page 3, line 2:

Delete all material and insert:

"\* **Sec. 2.** AS 23.30.250(a) is amended to read:

(a) A person who (1) knowingly makes a false or misleading statement, representation, or submission related to a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or misleading submission affecting the payment, coverage, or other benefit under this chapter; (3) knowingly misclassifies employees or engages in deceptive leasing practices for the purpose of evading full payment of workers' compensation insurance premiums; or (4) employs or contracts with a person or firm to coerce or encourage an individual to file a fraudulent compensation claim is guilty of workers' compensation fraud, which may be punished under AS 11.46.120 - 11.46.150, and may also be guilty of perjury and related offenses under AS 11.56.200 -

**11.56.230** [CIVILLY LIABLE TO A PERSON ADVERSELY AFFECTED BY THE CONDUCT, IS GUILTY OF THEFT BY DECEPTION AS DEFINED IN AS 11.46.180, AND MAY BE PUNISHED AS PROVIDED BY AS 11.46.120 - 11.46.150].

\* **Sec. 3.** AS 23.30.250(c) is repealed and reenacted to read:

(c) In addition to criminal penalties under this section, a person who violates this chapter is liable in a civil action brought by or on behalf of a person who suffers economic damages as a result of the violation for an award of three times the amount of compensatory damages resulting from the violation, subject to adjustment under AS 09.17, and an award of reasonable attorney fees."

Renumber the following bill sections accordingly.

Page 3, line 19:

Delete all material.

Renumber the following bill section accordingly.

REPRESENTATIVE HOLMES objected for the purpose of discussion.

[1:13:19 PM](#)

LINDA HALL, Director, Division of Insurance, Department of Commerce, Community, & Economic Development (DCCED), indicated that HB 314 would address some concerns that have arisen [with regard to current statute]. She recounted that in 2005, the legislature amended the Alaska Workers' Compensation Act, but in so doing inadvertently deleted the basis for the Workers' Compensation Board to adopt a fee schedule, though there was an expectation at the time that the stakeholders would propose legislation before August 1, 2007, to address that issue. When that didn't occur, medical fees were frozen until August 1, 2007, and the division subsequently provided for two Consumer Price Index (CPI) increases - one in 2006 and one in 2009 - with the existing extension due to expire on December 31, 2010, though the medical fee schedule is currently missing approximately 2,000 procedure codes. Once that last extension expires, there will be no cap of any kind on medical fees [related to workers' compensation].

MS. HALL noted that a chart in members' packets illustrates that in 2008, medical expenses made up 58 percent of the workers' compensation benefit system in all states for which National

Council on Compensation Insurance, Inc. (NCCI), provides ratemaking services. Another chart illustrates that in Alaska, in 2008, medical expenses made up 72 percent of the workers' compensation benefit system, though in 1988 and 1998, it made up only 52 percent and 63 percent respectively. In response to questions, she surmised that the entire cost of Alaska's workers' compensation benefit system has probably grown due to Alaska having a larger premium base - though the actual incident rate has decreased substantially - and it is the aforementioned growth in medical expenses which illustrates the importance of implementing a new medical fee schedule, as HB 314 is proposing to do.

MS. HALL noted that yet another chart illustrates the average yearly medical cost per case in Alaska - from 2004 through 2008 - versus the average yearly medical cost per case in the rest of the country; for example, in the rest of the country, the average yearly medical cost per case is \$26,000, whereas in Alaska, it's \$40,000 - substantially higher. Members' packets also include a handout illustrating workers' compensation premium rate rankings for all 50 states plus the District of Columbia; Alaska, for example, is ranked number one with an index rate of 3.97. Costs drive premiums, and the major costs of Alaska's workers' compensation benefit system are those pertaining to medical care. For these reasons, she remarked, "We need this fee schedule to be in place."

[1:19:48 PM](#)

MS. HALL acknowledged, however, that HB 314 is not a fix for Alaska's workers' compensation system, and won't lower premiums. Instead, HB 314 would provide for a sustainable fee schedule that could be renewed each year using data collected from individual vendors that collect "bill/charge" data. A fee schedule based on the CPI is simply not sustainable, whereas the methodology that was in place in 2004 - which HB 314 proposes to revert back to - is. She then noted that in addition to the provisions that address Alaska's workers' compensation fee schedule, other provisions of HB 314 would update the statutes pertaining to the prosecution of workers' compensation fraud, which, obviously, adds costs to the system. In the aforementioned 2005 legislation, authority to investigate and prosecute workers' compensation fraud was granted, but recent experience has shown that clarification of those statutes is warranted in order for the State to successfully prosecute such fraud.

MS. HALL explained that by changing the title and deleting the bill's proposed change to AS 11.56.205(a) - existing Section 1 - Amendment 1 would remove from the bill language regarding the crime of unsworn falsification. Amendment 1 would also provide more specificity to proposed AS 23.30.097(a)(1)(D) such that the fee schedule must be based on statistically credible data and must result in a schedule that reflects the cost in the geographical area where the services are provided, and is at the 90th percentile. She predicted that Amendment 1's proposed change to AS 23.30.097(a)(1)(D) would provide for a more accurate fee schedule. In response to a question, she said that passage of Amendment 1 wouldn't lower medical costs or workers' compensation insurance premiums; passage of Amendment 1 would, instead, merely provide a methodology for establishing a fee schedule, a methodology that could stay in place until an alternative is developed.

MS. HALL, in response to another question, noted that establishing a more permanent fee schedule is dependent upon the will of the legislature, and is clearly a policy call.

[1:27:11 PM](#)

CHAIR RAMRAS questioned what would occur with regard to injured workers, workers' compensation insurance premiums, and employers if Amendment 1 is adopted but a permanent solution is not then forthcoming.

MS. HALL opined that with regard to injured workers, having a fee schedule that is reflective of the average fees in a particular geographical area - and currently there are three such areas [in Alaska] - would allow injured workers access to medical care, thus addressing one of the division's primary concerns, particularly given that adopting "multiples of Medicare, for example," is not likely to occur in Alaska and, in any case, would not be in the best interest of injured workers attempting to access medical care. She surmised that employers, too, want their injured employees to have access to medical care so that they can come back to work. Again, the methodology proposed by Amendment 1 is sustainable and has already been proven to work, though it won't control costs or premiums.

CHAIR RAMRAS asked whether the cost of medical care is different for injuries that occur on the job than it is for injuries that don't occur on the job.

MS. HALL said that the cost of the medical care wouldn't be different, though what the medical care provider ultimately gets paid by the person, or his/her health insurance company, or the workers' compensation benefit system could vary depending on the situation.

CHAIR RAMRAS questioned what would result if Amendment 1 were to be amended such that in its change to proposed AS 23.30.097(a)(1)(D), the words, "90th percentile" were replaced with the words, "70th percentile".

MS. HALL, acknowledging that a 90th percentile is high, cautioned that in deciding what constitutes an acceptable reimbursement rate, the committee should keep in mind that ensuring injured workers have access to medical care is the primary goal.

[1:34:35 PM](#)

MR. JACKSON, in response to a question, offered his understanding that the words, "90th percentile" came from regulation.

MS. HALL concurred, adding that the medical fee schedule in the workers' compensation regulations has been at the 90th percentile for a significant number of years, and that's why the division is seeking to include that percentile in statute.

CHAIR RAMRAS expressed dissatisfaction with that rationale, and questioned whether reducing the percentile to an 80th percentile would both reduce workers' compensation insurance rates and ensure that injured workers have access to medical care.

MS. HALL said she is unable to predict whether such a change would still ensure that injured workers have access to medical care, surmised that medical care providers would be harmed by establishing the fee at an 80th percentile, but acknowledged that such a change might eventually translate into a benefit for employers because the division bases its premiums on the historical cost of claims. Various studies, she noted, conflict with regard to whether changing a fee schedule has resulted in a significant impact on the states that did so.

CHAIR RAMRAS offered his belief that reducing the percentile would be of benefit to employers, and said he would be seeking to amend Amendment 1 to that effect.

MR. JACKSON, in response to questions, said that there have been two CPI increases to the existing fee schedule, and that the bill doesn't contain a sunset provision.

REPRESENTATIVE GRUENBERG indicated that he would prefer to see the percentile increased to a 95th percentile, and would therefore be opposing a reduction to an 80th percentile.

[Chair Ramras turned the gavel over to Representative Herron.]

MS. HALL, in response to a question, explained that prior to the statutory change that occurred in 2005, the fee schedule was updated annually, and that such updates have not occurred since.

REPRESENTATIVE GRUENBERG asked for further information about the criminal provisions of the bill, of Amendment 1, and of existing statute.

MS. HALL indicated that the DOL found that the "fraud prosecution language" of existing AS 23.30.250(a) was insufficiently clear for prosecuting cases of fraud; that the language contained in the bill appears to address fraud only from a civil standpoint and then only as perpetrated by the employee; and that Amendment 1 would allow all those who commit fraud to be subject to both criminal and civil prosecution.

[Representative Herron returned the gavel to Chair Ramras.]

REPRESENTATIVE GRUENBERG offered his understanding that in cases involving fraud, changing current statute [as both the bill and Amendment 1 propose] would result in less civil damages being awarded.

MS. HALL concurred with that summation.

[1:48:45 PM](#)

ERIN POHLAND, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Anchorage), Department of Law (DOL), also concurred.

REPRESENTATIVE GRUENBERG questioned who would benefit by such a change.

MS. POHLAND indicated that such a change wouldn't benefit anyone in particular.

[1:51:32 PM](#)

DON ETHERIDGE, Lobbyist, Alaska American Federation of Laborers - Congress of Industrial Organizations (Alaska AFL-CIO), relayed that although the Alaska AFL-CIO has a concern about the fraud provisions of HB 314, Amendment 1 would address that concern by making those provisions applicable to all who commit fraud. In response to a question, he indicated that at this time, changing the percentile listed in Amendment 1 won't alter the Alaska AFL-CIO's position on either the bill or Amendment 1, and that in addition to having its concern regarding fraud addressed, the Alaska AFL-CIO simply wants to ensure that injured workers would still be covered and still have access to medical care.

[1:53:31 PM](#)

KENTON BRINE, Assistant Vice President, State Government Relations, Property Casualty Insurers Association of America (PCIAA), indicated that the PCIAA supports HB 314, though has not yet had a chance to review Amendment 1. He noted that medical expenses are higher in Alaska than in other states, and constitute a larger percentage of "lost cost" related to workers' compensation than in other parts of the country. He said he believes that the fraud provisions of the bill will help insurers control costs while still providing adequate protection for injured workers.

[1:55:29 PM](#)

STACY ALLAN, Officer, Laborers' Local 341, relayed that Laborers' Local 341 appreciates Amendment 1, which addresses concerns regarding the fraud provisions of the bill. She offered her hope that the legislature would continue to address the issues pertaining to workers' compensation and the effect that system has on injured workers. In response to a question, she indicated that the percentile provided for in Amendment 1 is not of concern to Laborers' Local 341.

[1:57:53 PM](#)

BARBARA HUFF TUCKNESS, Director, Governmental and Legislative Affairs, Teamsters Local 959, said that Teamsters Local 959 supports HB 314. She indicated, though, that arbitrarily lowering the percentile currently provided for in Amendment 1 would give Teamsters Local 959 great concern, because such a change could result in physicians refusing to provide medical

care to injured workers, and could create some of the same problems that have arisen with regard to Medicare/Medicaid.

[2:03:47 PM](#)

KEVIN B. DOUGHERTY, General Counsel, Alaska District Council of Laborers, noted that 8 A.A.C. 45.082(i)(3) uses the words "90th percentile"; that that percentile has been in place for at least 20 years; that his organization would have to conduct more research before it could speak to whether it would support lowering that number; and that it would be hard to say what percentile would start to impact service, which would be of concern. In conclusion, he asked the committee to be cautious when considering changing the percentile, and suggested that the issue warrants further study.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 314.

[2:05:23 PM](#)

CHAIR RAMRAS made a motion to amend Amendment 1 such that in its proposed change to AS 23.30.097(a)(1)(D), the words, "90th percentile" would be replaced with the words, "85th percentile".

REPRESENTATIVE GRUENBERG objected.

CHAIR RAMRAS explained that he is interested in striking the right balance between medical care for the injured worker and compensation for the medical community, and employer costs.

REPRESENTATIVE GRUENBERG said he opposes the amendment to Amendment 1, and pointed out that it has not yet been fully vetted with regard to how it would affect injured workers.

REPRESENTATIVE HOLMES agreed that the amendment to Amendment 1 merits further discussion, and relayed that absent that discussion, she is reluctant to vote for the amendment to Amendment 1.

REPRESENTATIVE HERRON questioned whether anyone has ever considered providing for a different percentile.

MS. HALL indicated that the division's focus has instead been to get a fee schedule in place to replace the one that's due to expire at the end of the year, and thereby prevent further

increases in "the system costs (indisc.) premiums for employers."

CHAIR RAMRAS characterized the amendment to Amendment 1 as a provocative change, and questioned why the committee shouldn't adopt it if doing so might lower employer costs.

REPRESENTATIVE LYNN, commenting that the committee has not yet heard why the percentile is currently set at a 90th percentile, characterized an 85th percentile as just an arbitrary number that was picked simply because it sounded good.

REPRESENTATIVE GRUENBERG again expressed a preference for not adopting the amendment to Amendment 1.

CHAIR RAMRAS withdrew the amendment to Amendment 1.

[2:13:46 PM](#)

CHAIR RAMRAS then made a motion to adopt a conceptual amendment to Amendment 1 such that in its proposed change to AS 23.30.097(a)(1)(D), the words, "is at the 90th percentile" would be replaced with the words, "the amount paid by the preferred provider network of insurers is not to exceed the 90th percentile".

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

MS. HALL cautioned against using that language, because there are a lot of preferred provider networks as well as what she called "rented networks."

CHAIR RAMRAS questioned whether that issue could be resolved by specifying that it would be the average amount paid by the top five preferred provider network of insurers. He expressed a preference for changing the language of Amendment 1 to address what he called ever-increasing workers' compensation insurance premiums.

MS. HALL explained that the division only collects information about billed charges, not paid charges, and surmised, therefore, that using such information in the calculation would present a big task.

CHAIR RAMRAS relayed that HB 314 would be set aside with the motion of whether to adopt the conceptual amendment to

Amendment 1, and the motion of whether to adopt Amendment 1, left pending.

The committee took an at-ease from 2:20 p.m. to 2:21 p.m.

**HB 71 - ADVANCE HEALTH CARE DIRECTIVES REGISTRY**

[2:21:02 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 71, "An Act relating to a registry for advance health care directives." [Before the committee was CSHB 71(HSS).]

[2:21:11 PM](#)

REPRESENTATIVE HOLMES, speaking as one of the bill's joint prime sponsors, moved to adopt the proposed committee substitute (CS) for HB 71, Version 26-LS0289\T, Kurtz/Bannister, 1/21/10, as the work draft. There being no objection, Version T was before the committee.

[Chair Ramras turned the gavel over to Representative Herron.]

REPRESENTATIVE HOLMES explained that HB 71 addresses advance health care directives - commonly known as living wills. A family member of an acquaintance of hers experienced a medical emergency while the family was on a trip out of state, and although the person who took ill did have a living will, it had been left locked up at home and so was of no use whatsoever. Representative Holmes said that upon hearing about this experience, she realized that she, too, could potentially be in a similar situation someday because although she does have a living will, she keeps it locked up at her father's house. House Bill 71 would establish, under the Department of Health and Social Services (DHSS), a voluntary registry for advance health care directives; those who choose to do so, could submit their living will information to the DHSS for inclusion in the registry - a secure, online database - that could then be accessed by hospitals and healthcare providers across the state.

[2:23:10 PM](#)

JAMES WALDO, Staff, Representative Lindsey Holmes, Alaska State Legislature - on behalf of Representative Holmes, one of the bill's joint prime sponsors - added that once entered into the registry, a person's living will would also be accessible to the

person, his/her agent, guardian, or surrogate, and other types of healthcare facilities such as nursing homes. In response to a question, he explained that under Version T, the DHSS would be allowed to contract with a registry organization to establish and maintain the State registry - such an organization would be able to do so at less cost than the DHSS.

REPRESENTATIVE GRUENBERG observed that the DHSS's decreased fiscal note for Version T reflects that change.

MR. WALDO concurred.

[Representative Herron returned the gavel to Chair Ramras.]

[2:26:21 PM](#)

WARD B. HURLBURT, M.D., Director and Chief Medical Officer, Central Office, Division of Public Health, Department of Health and Social Services, explained that HB 71 creates a mechanism for the storage of advance health care directives, and that both the division and the DHSS have worked with the sponsor and are in support of the intent to have advance health care directives made available via the proposed registry. The administration, however, has taken a neutral position on HB 71 due to the fiscal note.

REPRESENTATIVE GRUENBERG, mentioning that he strongly supports HB 71, expressed a desire for national uniformity and interstate cooperation regarding advance health care directives.

DR. HURLBURT, in response to a question, surmised that the Association of State and Territorial Health Officials (ASTHO) could potentially provide a forum to address such issues. He pointed out that any information submitted to the proposed registry would be accessible to healthcare providers out of state. Furthermore, some other states have adopted similar law, and so could serve as models for Alaska's registry.

CHAIR RAMRAS said he opposes HB 71 due to the fiscal note, and questioned why the State should pay someone over \$100,000 per year to maintain the proposed registry.

REPRESENTATIVE HOLMES clarified that the bulk of the fiscal note addresses startup costs, and that the amount required to maintain the registry after startup would quickly be scaled back.

DR. HURLBURT concurred.

REPRESENTATIVE GRUENBERG suggested that the issues raised by the fiscal note would be better addressed by the House Finance Committee, the bill's next committee of referral.

[2:35:01 PM](#)

MARIE DARLIN, Coordinator, AARP Capital City Task Force, noted that members' packets contain the AARP's letter of support for HB 71, and that her group is among those that worked very hard, for four years, to statutorily provide for advance health care directives, and so views HB 71 as a follow-up piece of legislation that would allow advance health care directives to actually be useful and function as intended. The AARP has worked very hard, and will continue to work very hard, to get its members to complete their advance health care directives and, hopefully, carry them with them; most people won't, however, and so HB 71 would hopefully provide recourse for those people. She indicated that although the AARP has not yet calculated the cost of maintaining the proposed registry, the AARP would like to see some consideration given to low-income people, perhaps via providing for a very low [registration fee]. With regard to the issue of needing access to the registry when traveling outside of Alaska, she offered her understanding that the bill is not yet clear with regard to whether healthcare professionals in the state a person is traveling in would have access to Alaska's registry. Regardless that that issue is one that might still need to be clarified, the AARP still supports HB 71 and hopes that it will pass.

REPRESENTATIVE HOLMES noted that proposed AS 13.52.310(c) outlines who could have access to the information in the registry, and that it specifically provides that a hospital in another state could obtain information from Alaska's registry if requested to do so by the individual or his/her agent, guardian, or surrogate.

MS. DARLIN questioned whether that language is all that's necessary.

REPRESENTATIVE HOLMES offered her belief that it is, that a healthcare provider would be able to access information in the registry regardless of where the healthcare provider and the person happen to be. That is her intent, she concluded.

MS. DARLIN, in response to a question, said that she does not know how many people would take advantage of the registry, nor how many people even have an advance health care directive in place yet, nor how such could be estimated.

DR. HURLBURT, in response to a question, surmised that although the details still need to be worked out, there would be various options for submitting advance health care directives to the registry; that they could be submitted in person, by mail, or electronically; that there would be a central location for such submissions; and that the intent is for a private firm to administer the registry and provide training to Alaska's hospitals and healthcare providers. In response to a further question, he explained that the DHSS staff the fiscal note references would be responsible for monitoring the procurement and selection processes, and help with statewide logistics. In response to a comment, he said he is unable to address the amount of the salary listed in the fiscal note.

CHAIR RAMRAS questioned how large of a registration fee would be required in order to pay for that staff position.

[2:44:37 PM](#)

DR. HURLBURT suggested that a registration fee, even a modest one, could prove to be a disincentive for people who might wish to use the registry. The intent of the bill is to facilitate the use of advance health care directives.

CHAIR RAMRAS remarked that regardless of the public good the bill would accomplish, it still puts a burden on the State and creates another job in State government.

REPRESENTATIVE HOLMES, in response to a question, explained that the department has worked very hard to reduce the fiscal note, thus illustrating the importance being placed on establishing an advance health care directive registry; under Version T, only one employee would be needed for the first year, with personal services costs being scaled back in subsequent years. In response to a question, she indicated that there is a lot of concern among those she's heard from that a registration fee would be required.

CHAIR RAMRAS said he is opposed to creating another job. He noted that the language of proposed AS 13.52.310(h) says in part, "The department may charge a fee to file a directive in the registry", and suggested that the word, "may" be changed to

the word "shall" in order to offset the estimated personnel costs.

DR. HURLBURT remarked that if such a change were made, then the committee should also consider having the bill provide an exemption from the fee for those who are indigent.

REPRESENTATIVE LYNN said he could envision even someone with just less income also being unable to afford a registration fee. In response to a comment, he said that if having an advance health care directive is a good thing, then it logically follows that a registry for such directives would also be a good thing because then people could actually make use of their directives. It would be nice, therefore, if everyone, regardless of income, could get their directives added to the registry.

[2:52:47 PM](#)

LORILYN SWANSON, Manager, Fireweed Place, Tlingit-Haida Regional Housing Authority (THRHA) - after mentioning that in addition to managing an independent-living senior complex, she also serves on the Juneau Commission on Aging (JCOA) - indicated that she is advocating for the adoption of HB 71, and is in favor of the State of Alaska establishing and maintaining an advance health care directive registry, which would hopefully be incorporated into a national advance health care directive registry. She went on to say:

I support this for several reasons. Many of us have advance directives, and they are filed away in our home files. ... Yes, we know they are there, but I ask you, how many family members know where it is or how to access the information - especially in an emergency. We live in the age of world travel. ... For those having an advance directive, they probably do not carry it with them; I know I don't, and I imagine that many of you do not as well.

I also see firsthand the confusion that can be created by medical emergencies. I manage an apartment building for an aging senior population. A 911 call leads to the emergency personnel being called to the building, and one of the first questions that I am usually asked, if it is a life threatening emergency, is, "Do you know if this person has an advance directive in place?" I may know, but unless it is lying on the table or in plain sight in the apartment,

I do not feel comfortable answering that question unless the tenant has specifically instructed me to do so in case of an emergency, and then I am still not comfortable with it.

In both of these cases, should there be a State registry, with coordination to a national registry, any emergency personnel or institution would have computer access to this information immediately. This is why we all have an advance directive in place, so that it can be acted upon per our own personal wishes and instructions. I would like to say, however, that I do not feel there should be a filing fee for registering. I feel that this would be a ... detriment for the many who are on low income, and they would not file. We worked hard, for four years, to get the advance directive here, in the state of Alaska, and now it is time to make it work by establishing this State registry. Thank you.

REPRESENTATIVE GRUENBERG asked how many people in Alaska would be eligible for inclusion in the proposed registry if the bill passes.

MS. SWANSON offered her belief that anyone who has an advance health care directive would be eligible for inclusion. She, too, relayed that she doesn't know how many people have an advance health care directive in place, though as an advocate for senior issues, she encourages everyone, not just seniors, to have one. In response to a question, she surmised that mandating a registration fee would probably not be popular with lower-income Alaskans.

[2:57:02 PM](#)

EMILY NENON, Director, Alaska Government Relations, American Cancer Society Cancer Action Network (ACS CAN), said that the ACS CAN supports HB 71. She recounted that in his later years, her father developed severe dementia, and spent the last four years of his life in a nursing home. During the last six months of his life, his advance health care directive was overlooked three separate times. On one occasion, when he was still living in the nursing home, her mother was called to meet the ambulance staff taking him from the nursing home to the hospital, and when she got there, she found that the ambulance staff had managed to resuscitate him, and the attending physician was mortified upon learning that her father had had an advance health care

directive but the nursing home had not sent it over with the ambulance staff. In conclusion, she said she doesn't want to see anyone else go through the same agony her family went through.

[HB 71, Version T, was held over.]

**HB 331 - YOUTH COURTS AND CRIMINAL FINES**

[2:58:40 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 331, "An Act relating to funding for youth courts; and relating to accounting for criminal fines."

CHAIR RAMRAS turned the gavel over to Representative Herron.

[2:59:21 PM](#)

T. TERRY HARVEY, Staff, Representative Cathy Munoz, Alaska State Legislature, on behalf of the sponsor, Representative Munoz, explained that HB 331 would provide a funding mechanism for Alaska's youth courts, which are an alternative venue for youth offenders and which have been a great success in Alaska for over 20 years; under the bill, funding would come from a portion of the criminal fines imposed by the Alaska Court System.

[HB 331 was held over.]

[3:01:02 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:01 p.m.